

Claim 24 (original): A fabric article comprising at least polypropylene tape fiber as defined in Claim 21.

Claim 25 (original): The fabric article of Claim 22 wherein said article is a carpet backing.

Claim 26 (original): The fabric article of Claim 23 wherein said article is a carpet backing.

Claim 27 (original): The fabric article of Claim 24 wherein said article is a carpet backing.

REMARKS

The pending claims are 19-27. Claims 1-18 have been canceled for refiling in a proper continuation application. No claims have been amended or added.

The Office has rejected all of the claims under the judicially created doctrine of obviousness-type double patenting over U.S. Pat. No. 6,541,554, as well as (provisionally) over the claims of U.S. Pat. Appl. No. 10/036,604. Applicants supply herein proper Terminal Disclaimers to over come such rejections.

The Office has also rejected Claims 1-27 under 35 U.S.C. § 102(e) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,541,554. Such a cited prior art reference issued on April 1, 2003, thereby limiting its applicability over the present application as a reference under 35 U.S.C. § 102(e) (as set forth by the Office). As stated in 35 U.S.C. § 103(c), and in view of the Statement to

Disqualify such a reference as prior art provided herein, the fact that both the current application and the '554 patent were subject to an assignment to Milliken & Company at the time the currently claimed invention was made, such a reference cannot properly be cited against the pending claims. Thus, neither of the alternative bases of rejection are proper either. For that reason, it is respectfully requested that reconsideration and withdrawal of such bases of rejection be performed in this instance by the Office. Reconsideration and withdrawal of such a basis of rejection are thus earnestly solicited.

The Office has also rejected Claims 1-27 under 35 U.S.C. § 103(a) as being unpatentable over Fujishita et al. in view of Conner et al. Applicants respectfully disagree with the basis of this rejection primarily because the Fujishita et al. reference does not provide proper and/or sufficient motivation to incorporate any nucleating agents within polypropylene tape fibers, contrary to the Office's position. Fujishita et al. do state that previous attempts at providing improved heat shrinkability and tenacity to polypropylene fibers was followed through the utilization of nucleating agents within the base resins. However, patentees specifically state on col. 2, lines 25-29, that such a procedure and there was no observation of heat shrinkability improvements within those target fibers at all. In order to attain their low-shrink, high-tenacity fibers, Fujishita et al. were forced to chemically select certain isotactic pentad ratios and other like modifications to the base polypropylenes, rather than utilizing non-reactive additives, such as nucleating agents, for such a result. As such, it is evident that Fujishita et al. teach a path that is not only divergent from that followed by Applicants and is that which is now embodied within their pending claims, but is

completely opposite therefrom as well. The fact that Conner et al. teach the presence of nucleating agents within their non-low-shrink fibers fails to remedy this problem. It is well settled within the realm of patent law that a teaching away from a claimed invention fails to provide the necessary motivation for an ordinarily skilled artisan to have actually produced such an invention in view of the divergent cited prior art. Such is the case here.

Reconsideration and withdrawal of this improperly applied basis of rejection are therefore respectfully requested.

The Office further has rejected Claims 1-27 under 35 U.S.C. 102(a) as being anticipated by, or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over JP 2001-081628 (Application '648). Applicants have supplied the declaration of Brian M. Burkhardt to show that anticipation does not lie in this situation since, at least within the remaining pending claims, the X-ray scattering pattern for the disclosed fibers as preferred within this Japanese application do not meet the requirements in terms of the distance from the center of the pending claims. Thus, the claims are not anticipated by this reference. Nor is there any indication or direction provided by this reference to motivate the ordinarily skilled artisan to modify the disclosed fibers of the '648 Application to the degree as now claimed. Hence, it is respectfully submitted that there are no bases of rejection existing over the pending claims in view of this cited application. Reconsideration and withdrawal thereof of such rejections are thus earnestly solicited.



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CONCLUSION

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In view of the amendments and remarks above, it is respectfully submitted that the pending application is now in condition for allowance and it is thus respectfully requested that such application be passed on to issue.

Respectfully requested,

January 5, 2004

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on January 5, 2004, along with a postcard receipt.

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